



U.S. Citizenship
and Immigration
Services

FILE:

Office: TEXAS SERVICE CENTER

Date:

JUN 17 2004

IN RE:

Petitioner:

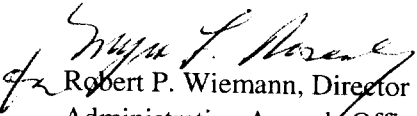
Beneficiary:

PETITION: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected.

The petitioner is described as a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to perform services as a director of religious activities at an annual salary of \$21,000.

The director denied the petition on December 12, 2002. The director determined that the petitioner had not established that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for two years immediately preceding the filing date of the petition.

The Form I-360, Petition for Amerasian, Widow or Special Immigrant was filed on April 30, 2001. Part 9 of the Form I-360 contains the signature of [REDACTED] the petitioner's authorizing official. Part 10 of the Form I-360 indicates that the form was prepared by attorney [REDACTED]. At the time of filing the petition, two properly executed Forms G-28, Notice of Entry or Appearance of Representative, were submitted, both dated April 10, 2001. One Form G-28, on behalf of the petitioner, is signed by [REDACTED] and attorney Forte. The other, on behalf of the beneficiary, is signed by the beneficiary and attorney Forte.

On January 13, 2003, a Form I-290B, Notice of Appeal, was submitted and signed by the beneficiary. On appeal, the beneficiary provides the following statement:

I am enclosing evidence from the [REDACTED] in Korea showing that I worked there from 1996 to 1999. In the United States I worked for [the petitioner] for the past two years as a volunteer because I did not have employment authorization and [the petitioner] could not place me on its payroll.

In support of the appeal, the beneficiary submits a letter from attorney Forte stating: "... [E]nclosed please find Notice of Appeal on behalf of [the beneficiary]. . . ." The beneficiary also submits a photocopy of a letter from [REDACTED] of the [REDACTED] in Seoul, Korea. [REDACTED] indicates that the beneficiary was employed by that church from 1996 through 1998, performing services as an assistant secretary for the church's men's club and assisting in church activities.

The regulation at 8 C.F.R. § 103.3(a)(1)(iii)(B) states:

Meaning of affected party. For purposes of this section and §§ 103.4 and 103.5 of this part, *affected party* (in addition to the Service)¹ means the person or entity with legal standing in a proceeding. It does not include the beneficiary of a visa petition. An affected party may be represented by an attorney or representative in accordance with part 292 of this chapter.

The regulation at 8 C.F.R. § 292.4(a) states, in pertinent part, that: "[a]n appearance shall be filed on the appropriate form by the attorney or representative appearing in each case. . . . [a] notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service."

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states, in pertinent part: "[t]he affected party shall file an appeal on Form I-290B." Under the provisions of 8 C.F.R. § 103.3(a)(2)(v), "[a]n appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded."

¹ The Immigration and Naturalization Service ("INS" or "Service") is now known as Citizenship and Immigration Services ("CIS").

In this case, the appeal has been filed by the beneficiary, not the petitioner. The Form I-290B is not signed by either the petitioner's authorizing official, Pastor Kim, or the petitioner's authorized representative, attorney Forte. Therefore, the appeal has not been properly filed and must be rejected.

Although the appeal is being rejected, it is noted that the director's concerns have not been overcome. Furthermore, there are additional reasons for denial of this petition that were not addressed by the director. Upon review of the record, the petitioner has not submitted sufficient evidence to establish that: (1) it qualifies as a bona fide non-profit religious organization; (2) it has extended a qualifying job offer to the beneficiary; (3) it has had the ability to pay the beneficiary the proffered wage since the filing date of the petition; (4) the proposed position qualifies as a religious vocation or occupation; and, (5) the beneficiary is qualified to engage in a religious vocation or occupation. Since the appeal will be rejected, these issues need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. In accordance with 8 C.F.R. § 103.3(a)(1)(v), the appeal will be rejected.

ORDER: The appeal is rejected.